

SERVICE DATE – OCTOBER 27, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1235X

MCM RAIL SERVICES LLC, D/B/A BALTIMORE INDUSTRIAL RAILROAD—  
PETITION FOR DISCONTINUANCE OF SERVICE EXEMPTION—  
IN BALTIMORE COUNTY, MD

Digest:<sup>1</sup> This decision permits MCM Rail Services LLC to discontinue rail service over an approximately 12-mile rail line in Sparrows Point, Baltimore County, Md.

Decided: October 23, 2015

By petition filed on July 28, 2015, MCM Rail Services LLC (MCM Rail), d/b/a Baltimore Industrial Rail, seeks an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10903 to discontinue service over an approximately 12-mile line of railroad in Sparrows Point, Baltimore County, Md. (the Line). Notice of the exemption was served and published in the Federal Register on August 17, 2015 (80 Fed. Reg. 49,311). No comments concerning the proposed discontinuance were filed. We will grant the exemption from 49 U.S.C. § 10903.

BACKGROUND

The Line is owned by Sparrows Point Rail, LLC (SP Rail), and is operated by MCM Rail pursuant to a Railroad Services Agreement (Agreement) with SP Rail. See MCM Rail Servs. LLC—Operation Exemption—Hilco SP Rail, LLC, FD 35725 (STB served June 14, 2013). MCM Rail states that there are currently 12 shippers on the Line and that they shipped a total of 7,365 carloads in the 12 months ending April 30, 2015.<sup>2</sup> MCM Rail states that the Line constitutes its entire system. According to MCM Rail, upon its discontinuance of service over the Line, rail service will be provided by SP Rail, which has residual authority to operate the Line.<sup>3</sup> See Hilco SP Rail, LLC—Acquis. & Operation Exemption—RG Steel R.R. Holding, LLC, FD 35734 (STB served Apr. 26, 2013). MCM Rail states that, pursuant to their

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> See Pet. 5.

<sup>3</sup> Id. at 3.

Agreement, SP Rail has provided notice to MCM Rail that the Agreement is being terminated.<sup>4</sup> MCM Rail further states that it is working in conjunction with SP Rail to ensure an orderly transition of service so that there will be no interruption in rail service.<sup>5</sup>

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of MCM Rail's proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. MCM Rail asserts that discontinuance will not have any adverse impact on the shippers on the Line, as there will be no interruption of service.<sup>6</sup>

An exemption would minimize the administrative expense of the application process, expedite regulatory decisions, reduce regulatory barriers to exit, and provide for the expeditious handling and resolution of proceedings by more quickly permitting MCM Rail to formally discontinue operations on a line. 49 U.S.C. §§ 10101(2), (7), & (15). Other aspects of the RTP would not be adversely affected by the use of the exemption process.

We find that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power.<sup>7</sup> As noted, MCM Rail would be replaced by the owner of the Line, which already has authority to operate over it. MCM Rail asserts that the new operator, SP Rail, would not have any more market power than the existing operator and that rail service will continue uninterrupted. Nevertheless, to ensure that the 12 shippers on the Line are informed of this proceeding and of our action here, we will direct MCM Rail to serve a copy of this decision on the 12 shippers it has identified so that the shippers receive this decision within five days of its service date, and to certify to the Board contemporaneously that it has done so.

When a carrier is discontinuing service over its entire system, the Board does not impose labor protective conditions, subject to certain exceptions not at issue here. Thus, no labor

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<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Because we find that regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed discontinuance is limited in scope.

protective conditions will be imposed. Additionally, because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the Line for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. The OFA provisions under 49 U.S.C. § 10904 for a subsidy to provide continued rail service apply to discontinuances, and thus, even though SP Rail will continue to operate the Line, we will not foreclose potential subsidies out of hand.

Because there will be no salvage and no diversion of traffic, this action does not trigger the environmental review process.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service by MCM Rail of its operations over the above described line.

2. MCM Rail is to serve a copy of this decision on the 12 shippers it has identified so that the shippers receive this decision within five days of service, and MCM Rail is to certify to the Board contemporaneously that it has done so.

3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by MCM Rail and the Board by November 6, 2015, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 1152(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,600. See 49 C.F.R. § 1002.2(f)(25).

4. OFAs for subsidy and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: “**Office of Proceedings, AB-OFA.**”

5. Petitions to stay must be filed by November 6, 2015. Petitions to reopen must be filed November 16, 2015.

6. Provided no OFA to subsidize the continued rail service has been received, this exemption will be effective on November 26, 2015.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.